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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,492	09/15/2000	J. Keith Kelly	6945.002.00	3670
30827	7590	10/18/2006	EXAMINER	
MCKENNA LONG & ALDRIDGE LLP			GART, MATTHEW S	
1900 K STREET, NW			ART UNIT	
WASHINGTON, DC 20006			PAPER NUMBER	
			3625	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/662,492	<b>Applicant(s)</b> KELLY ET AL.	
	<b>Examiner</b> Matthew S. Gart	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 34 is/are pending in the application.
- 4a) Of the above claim(s) 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-13, 18-20 and 34 is/are rejected.
- 7) ☒ Claim(s) 5-8 and 14-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Prosecution History Summary**

- Claims 1-20 and 34 are pending in the instant application.
- Claims 21-33 were previously withdrawn from consideration.
- Claims 5-8 and 14-17 are objected to as being dependent upon a rejected base claim.
- Claims 1-4, 9-13, 18-20 and 34 are rejected as set forth below.

### ***Claim Objections***

Claims 5-8 and 14-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-12 and 34 are rejected under 35 U.S.C. 112, second paragraph.**

Referring to claims 1-12. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of the claim is unclear, because although the preamble sets forth a method "of providing agricultural pesticides," none of the steps in the body of the claim actively achieves the goal of the preamble.

Referring to claim 34. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of the claim is unclear, because although the preamble sets forth a method "of providing agricultural pesticides," none of the steps in the body of the claim actively achieves the goal of the preamble.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 34 is rejected under 35 U.S.C. 101.**

Referring to claim 34. Claim 34 does not provide a practical application that produces a concrete and tangible result. The result of the instant invention can be construed as one or more instructions, generated by a human being. The instructions generated by the individual might be considered "useful" in the sense that the inputs may be used in choosing a pesticide registered in a geographical region. However, 101 require that the results be reproducible. See *In re Swartz*, 232 F. 3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000). Since the instructions can be subjective and dependent on a cognitive process, the subjective component of the invention is not amenable to reproducibility of a result. In any event, the result (i.e., instructions for choosing a pesticide registered in a geographical region) is not concrete or tangible.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1-4, 9-13, 18-20 and 34 are rejected under 35 U.S.C. 102(a) as being anticipated by Cppress.com (PTO-892, Ref U).**

Referring to claim 1. Cppress discloses a method of providing agricultural pesticides, comprising:

- Inputting into a computer
  - The identity of a pest existing on a property (Page 10, Quickly search the indexes by multiple pests..."); and
  - The identity of a plant or crop existing on the property, wherein said plant or crop is adversely affected by said pest (Page 10, "Indexes include all labeled plant and pest species");
  - The location of the property (Page 10, "sites"); and
- At a computer, executing an algorithm for generating therefrom instructions for choosing a pesticide registered in said location to protect said plant or crop from said pest (Page 10, "Display and print product summaries" and Page 3).

Referring to claim 2. Cppress further discloses a method wherein said instructions allow for a comparison of different products (Page 1).

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Referring to claim 3. Cppress further discloses a method wherein the instructions provide access to a material safety data sheet (Page 3, "Agricultural Services").

Referring to claim 4. Cppress further discloses a method comprising obtaining the product by sale on-line (Page 2, "Greenbook Website").

Referring to claim 9-12. Cppress further discloses a method comprising accessing a farm-planning guide to assist a user in optimizing crop yield, providing information regarding seeds, and providing information regarding fertilizers (Page 3, "Agricultural Services").

Referring to claim 13. Claim 13 is rejected under the same rationale as set forth above in claim 1.

Referring to claim 18-20. Claims 18-20 are rejected under the same rationale as set forth above in claims 9-12.

Referring to claim 34. Claim 34 is rejected under the same rationale as set forth above in claim 1.

### ***Response to Arguments***

Applicant's arguments filed 9/6/2005 have been further considered but are not persuasive.

The Applicant's argue that Cppress.com fails to teach, either expressly or inherently, executing an algorithm for generating instructions [based on an input identity of a pest on a property, an input identity of a plant/crop on the property, and the location of the property] for choosing a pesticide registered in said location to protect said plant or crop from said pest.

The Examiner notes, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In claim 1, the information inputted is not necessarily linked to the information generated via the algorithm. The algorithm could be based and generated from a plurality of inputted information and not necessarily limited to the information inputted in steps 1, 2, and 3 of claim 1.

The Examiner further notes, Cppress utilizes an "Electronic Pesticide Reference" in order to locate plant protection products. The "Electronic Pesticide Reference" includes interactive indexes and product summaries. These indexes are labeled by plant species and pest species. In order for a consumer to find a suitable plant protection product, they would first locate on the indexes the particular plant they are



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seeking protection. Once the plant is identified, the computerized interactive indexes can be quickly searched via pest, site and classification. The input of this information results in a computerized searching algorithm, which displays plant protection product recommendations. The searching algorithm is functionally equivalent to the algorithm claimed in the instant application. In both cases a user inputs information and receives a product recommendation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP2001290901A, April 10, 2000, Nogyo Gijutsu Tsushinsha, Industrial information providing system e.g. for agriculture acquires various industrial data from different mediums and stores it along with destination information for providing to data claimant

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Gart whose telephone number is 571-272-3955. The examiner can normally be reached on M-F, 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MSG  
Primary Examiner  
October 6, 2006